

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 684 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SINDHI LOHANA BHIMANDAS MULCHAND

Versus

VIJYABEN VALLABHADAS

Appearance:

MR ND NANAVATI for Petitioner
MR TV SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/05/2000

ORAL JUDGEMENT

1. This civil revision application is directed against the order passed by the learned Assistant Judge, Junagadh in Regular Civil Appeal No.182/83 by which the learned appellate Judge has confirmed the decree for

eviction passed by the learned Civil Judge (Junior Division), Junagadh in Regular Civil Suit No.735/81. The respondent herein is the original plaintiff who filed the aforesaid suit for getting the possession of the suit premises from the defendant - tenant on the ground of nonpayment of the rent. It is the case of the plaintiff in the said suit that the suit premises which is a shop was given to the tenant at the monthly rent of Rs.50/-. That the tenant has not paid the rent from 1.2.1978 to 31.7.1979 for about 18 months, the plaintiff, therefore, gave demand notice demanding arrears of rent as contemplated by section 12(2) of the Bombay Rent Act. However, inspite of the suit notice, the defendant-tenant did not comply with the same nor tender any amount of arrears of rent. The plaintiff, therefore, filed the suit for getting the decree for possession on the ground of arrears of rent. The plaintiff also claimed the decree for Rs.2150/- towards arrears of rent and mesne profits.

2. The defendant appeared in the suit by engaging the advocate, however, he did not file the written statement contesting the said suit. The trial court had granted various adjournments to the defendant - tenant for the aforesaid purpose of filing the written statement.

3. Thereafter, the trial court raised issues at Exh.13, and after recording the evidence, ultimately, decreed the suit on the ground of arrears of rent. The trial court found that the tenant was in arrears of rent for more than six months and since the dispute of standard rent was not taken within one month from the receipt of the suit notice, the decree under section 12(3)(a) of the Bombay Rent Act was passed.

4. The tenant, thereafter, carried the matter in appeal by filing Regular Civil Appeal No.182/83. The learned Assistant Judge, Junagadh who heard the said appeal, ultimately dismissed the same by his judgment and order dated 28.2.1985.

5. The present revision application has been filed by the tenant challenging the aforesaid order of the appellate court.

6. At the time of hearing of this civil revision application, it was argued by Mr.Hriday Buch for Mr.Nanavaty, that the tenant could not file his written statement nor he could lead any evidence before the trial court, and therefore, for the interest of justice, the

matter may be sent back to the trial court for allowing him to lead proper evidence. He also argued that, during the pendency of the appeal, since the tenant had deposited the full rent, the decree for eviction may be set aside as it can be presumed that, he was ready and willing to pay the rent.

7. So far as the argument regarding sending the matter back is concerned, I do not find any substance in the same. It has been found by the learned appellate Judge that the trial court had given many opportunities to the tenant for filing the written statement. The tenant was represented by the advocate, even then he has not filed his written statement. It is also clear that, in response to the suit notice, he has not paid or tendered any arrears of rent. It seems that, approach of the defendant was absolutely casual. It seems that, he was not interested in contesting the suit at all. Even, at the time of hearing of this civil revision application, Mr. Buch took sometime to find out the latest position about the disputed property, but Mr. Buch subsequently submitted that, he is not getting any response from his client. In any case, when so many adjournments were given by the trial court, the tenant had not filed the written statement and when within one month of the receipt of the suit notice, he has not tendered any arrears of rent, no useful purpose will be served in sending the matter back to the trial court because there is no escape from the eviction decree under section 12(3)(a) of the Bombay Rent Act, in view of the fact that, no dispute of the standard rent was taken within one month and the rent is payable by month, therefore, all the ingredients of section 12(3)(a) are available in the present case. Therefore, it is not necessary to send the matter back for a fresh trial.

8. It was argued by Mr. Shah, learned advocate for the respondent that, in view of the judgment reported in 31(1) GLR, 209, if the rent is payable by month, and if, there is no dispute of the standard rent taken within one month in response to the suit notice, the decree under section 12(3)(a) is required to be passed. In the present case, as stated earlier, the rent is payable by month and no dispute of the standard rent is taken within the stipulated time. Therefore, once the provision of section 12(3)(a) is attracted, there is no other alternative, but to pass a decree under section 12(3)(a) of the Bombay Rent Act. When the case clearly falls under section 12(3)(a) of the Bombay Rent Act, it is not relevant whether subsequently the tenant has paid the rent during the pendency of the appeal in the appellate

court or not. The trial court also found that, during the trial as well as on the first date of hearing, the tenant had not paid anything, and therefore, he may not be in a position to get the protection even under section 12(3)(b) of the Bombay Rent Act.

9. In that view of the matter, there is absolutely no substance in this civil revision application. The tenant has not sent any amount of rent in response to the notice of demand, nor he has given any reply to the suit notice. Not only that, he has not even cared to file the written statement. In that view of the matter, it cannot be said that, both the courts below have committed any error of law in passing the decree for possession under section 12(3)(a) of the Bombay Rent Act. I, therefore, find no substance in this civil revision application and the same is required to be dismissed and accordingly the same is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

10. Mr.Buch, learned advocate for the petitioner at this stage requested for granting some time to vacate the suit premises. Harping upon the financial condition of the defendant - tenant, Mr.Shah, learned advocate for the respondent stated that, he has no objection, if reasonable time is granted to the petitioner to make alternative arrangement for his business. In the facts and circumstances of the case, the defendant - tenant is granted time upto 31.12.2001 to vacate the suit premises. Accordingly, the decree for possession shall not be executed till 31.12.2001. The aforesaid time is granted on condition that the defendant - tenant shall file usual undertaking before this court within eight weeks from today. The defendant - tenant should clearly mention in the said undertaking that he is in exclusive possession of the suit premises and that without obstructing in any manner, he will hand over the vacant and peaceful possession to the respondent - plaintiff on or before the aforesaid date. The defendant - tenant should also pay mesne profits regularly till he vacates the suit premises. If, the aforesaid undertaking is not filed on or before the aforesaid date or subsequently, if there is any breach of the said undertaking, it will be open for the respondent-plaintiff to execute the decree for possession forthwith.

(P.B.Majmudar,J.)
(pathan)